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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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(904) 964-5001

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JUN 10 1993

JUNE 9, 1993

FCC - MAIL ROOM

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Beverly Hills, Florida  
MM Docket No. 92-195

Dear Ms. Searcy:

~~Transmitted by teletype and~~

Before The

## FEDERAL COMMUNICATIONS COMMISSION

JUN 10 1993

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In The Matter of )

Amendment of Section 73.202(b) )

FM Table of Allotments )

FM Broadcast Stations )

(Beverly Hills, Chiefland, )

Holiday, Micanopy, and )

Sarasota, Florida )

MM Docket No. 92-195

RM-7091

RM-7146

RM-8123

RM-8124

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JUN 10 1993

TO: Chief, Allocations Branch  
Policy and Rules Division

FCC - MAIL ROOM

MOTION TO ACCEPT LATE FILED PLEADING

Dickerson Broadcasting, Inc. ("Dickerson"), licensee of WEAG FM, Starke, Florida, herein wishes to bring to the attention of the Commission certain findings. On June 3, 1993, Dickerson became aware of a OPPOSITION TO PETITION FOR RECONSIDERATION dated May 17, 1993 and date stamped by the Commission on May 14, 1993. This "opposition petition" was filed by Pasco Pinellas Broadcasting Co. ("Pasco"). licensee of Station WLVU-FM, Holiday, Florida.

The CERTIFICATE OF SERVICE, which was attached, was also dated May 17, 1993 and indicated that Dickerson was served. Dickerson never received this "opposition petition" by hand delivery or first class mail, postage prepaid.

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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| Holiday, Micanopy, and         | ) | RM-8124              |
| Sarasota, Florida              | ) |                      |

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JUN 10 1993

TO: Chief, Allocations Branch  
Policy and Rules Division

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

JOINT REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION

Dickerson Broadcasting, Inc. ("Dickerson") licensee of WEAG FM, Starke, Florida herein opposes the Opposition to Petition for Reconsideration Petition filed May 14, 1993 by Pasco Pinellas Broadcasting Co. ("Pasco"), and the Opposition to Petition for Reconsideration Petition filed May 13, 1993 by Sarasota-FM, Inc., ("SFI"), Gator Broadcasting Corporation ("Gator"), and Heart of Citrus, Inc., ("Heart"). The Commission must dismiss these petitions, reconsider the rule making thereby recognizing fundamental flaws in their engineering and notification regarding Dickerson.

A. BACKGROUND

Through the Report and Order released March 29, 1993, in the above-captioned proceeding, the Allocations Branch, among other things, substituted Channel 292C3 for Channel 246A to Beverly Hills, Florida. This New Allocation created a 4.1 kilometer short spacing with Dickerson under Section 73.207 of the Commission's current rules. Under Section 73.207, 142 kilometers

are required spacing between a Co-Channel A to C3, therefore Dickerson opposes this new allocation. Dickerson was not a party in this proceeding, however, Dickerson was named a party only in the final order. Wherein Dickerson lost protection to WEAG FM, thereby modifying the terms of its license. Dickerson was not served, notified or otherwise informed of this proceeding by the proponents or commission at any time.

Dickerson objects to the New Allocation of Channel 292C3 to Beverly Hills because it is a new allocation, received by the Commission on October 30, 1992, and is 4.1 kilometers short spaced to WEAG FM, 292A under Section 73.207 of the Commission's current rules.

#### B. PASCO'S OPPOSITION

##### Dickerson further refines Pasco's opposition and responds:

1. While Dickerson complains the Channel 292C3 upgrade for Beverly Hills frustrates Dickerson's plans to change WEAG FM's tower location, and power increase to 6 KW, the most important thing that occurs is the 4.1 kilometer short spacing that results in WEAG having a station license that is short spaced with Beverly Hills, thereby decreasing Dickerson's service to the public, and Dickerson had no chance to present its' views by not being notified. Even without a change of tower location, Dickerson can increase power to 6 KW with appropriate power increase agreements, if the Beverly Hills 292 Channel is properly spaced with the present WEAG FM tower site location.

2. It is true, Dickerson was not "served, notified or otherwise informed of this proceeding". Section 73.213(c)(1) of the rules was used incorrectly by party(ies) in this proceeding to cloak this short spacing from Dickerson, thereby not having to serve Dickerson. Dickerson had no legal obligation or responsibility to be aware of this proceeding, as it was named a party only in the final order. Furthermore, Dickerson had no responsibility to respond in a timely manner.

3. Dickerson does indeed argue the Allocations Branch erred in agreeing that 73.213(c)(1) was applicable to the Beverly Hills channel substitution. RM 8124,<sup>1/</sup> received at the Commission on October 30, 1992 appeared to be a "catchall". The original Gator rule making proposal regarding Channel 292 filed on August 30, 1989 referred to in this proceeding regarding Beverly Hills was for a Channel 292A allocation, which was properly spaced with WEAG. The 292C3 counterproposal, RM 8124 for Beverly Hills, received by the Commission on October 30, 1992, is simply a new allocation and must be processed under Section 73.207 of the current rules, i.e.: A to C3 Co-channel being 142 kilometers.<sup>2/3/</sup>

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<sup>1/</sup> RM Nos. 8123 and 8124 were not published in the Federal Register Daily Digest

<sup>2/</sup> Gator and Sarasota FM-Inc. were trying to daisy chain their way for a free ride, regardless of how loose and fast they use the Commission's rules.

<sup>3/</sup> The September 29, 1989 petition filed by Heart proposing Channel 246C3 and the October 30, 1992 Counterproposal for Rulemaking, RM No. 8123 proposing 246C2 clearly show Heart to have a clean

C. DICKERSON REPLIES TO SFI, GATOR & HEARTS OPPOSITION

1. Page 3, Footnote 2. SFI and Gator cite a similarity between their their August 30, 1989 petition and their October 30, 1992, RM 8124 <sup>4/</sup> rulemaking counterproposal. The only thing similar is the channel (292), unless a 3,000 watt FM station is similar to a 25,000 watt station.

2. Page 6, Footnote 5. Dickerson did not delay WDFL FM from changing channels from 292A to Channel 295C1. Gator and SFI caused this by filing a petition for rulemaking on August 30, 1989 when they decided to daisy chain along with the Beverly Hills and Holiday upgrades. Dickerson has complained about interference from WDFL FM in Cross City. If a Class A in Cross City caused Dickerson interference, just think what a 25,000 watt, short spaced C3 (292C3) from Beverly Hills would do. The Cross City station is not going to disappear. It will become Dickerson's third adjacent channel with 100,000 watts and it is asking to change its City of License to Bronson, much closer to Starke. When Women in Florida Broadcasting, ("WIFB") originally filed to upgrade WDFL FM from Channel 292A to 295C1, the application showed a considerable white area to be served, but since thats been granted the new owners of "WIFB" have counterfiled to change their City of License to Bronson, thereby completely disregarding the original white area proposed.

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<sup>4/</sup> RM Nos. 8123 and 8124 were not published in the Federal Register Daily Digest.

3. Page 7, Paragraph 13. SFI, Gator and Heart state:

"Moreover, neither WEAG nor any of the parties have filed applications with the Commission to increase power."

Dickerson, herein is presenting as EXHIBIT A, an AGREEMENT entered into on June 3, 1992, by and between Carol Jean Lamons ("Lamons"), permittee of WCJX, Five Points, Florida, and Dickerson Broadcasting, Inc. ("Dickerson"), licensee of WEAG FM, Starke, Florida.<sup>5/</sup> This agreement seeks to maximize the potential of their respective radio stations, and is a matter of record with the Commission in WCJX (FM), Five Points, Florida, BMPH-920612IG and formerly Permit File No. BPH-890112MK.

In addition to Exhibit A, Dickerson has been further diligent in attempting to improve WEAG.<sup>6/</sup>

4. Page 7, Paragraph 15. Dickerson's qualifications are a matter of record with the Commission. A First Class Radiotelephone Operator License, Pl-3-3837 was issued on July 18, 1960 to Benjamin F. Dickerson and was thereafter converted to a Lifetime General Radiotelephone License on January 2, 1985. Also, an Amateur Extra Class Radio Operator License, AE-3-1179 was issued to Benjamin F. Dickerson on October 26, 1983. SFI, Gator and Heart would only be correct if the Commission denied the upgrades to all four (4) radio stations. Dickerson is simply seeking relief with regard to Heart only.

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<sup>5/</sup> Carol Jean Lamons, upon reading the SFI/Gator/Heart Opposition Petition, reminded Dickerson that their Agreement was not included in Dickerson's Petition for Reconsideration

<sup>6/</sup> On November 12, 1992 Dickerson engaged Richard S. (Stu) Graham, Jr. of Bromo Communications, Inc. to do a channel study for Dickerson. Mr. Graham said he was doing work for some other people, however he did not feel it would be a problem. He did not say he was working for SFI/Gator and never revealed the Channel 292C3 allocation he had requested for Beverly Hills.

4. Cont. The 4,925 square kilometer increase on Page 9 of Dickerson's Petition for Reconsideration is correct and the Ponte Vedra Beach, Florida increase of over 200,000 persons is correct from an engineering study by one of the applicants. If the Commission requests engineering data to support these contentions, Dickerson is willing to supply such, or in an effort to resolve this dispute the Commission may be willing to perform same. Also, if the Commission requests 6KW power increase agreements from necessary parties, Dickerson will supply same promptly.

D. CONCLUSION

Channel 292C3 for Beverly Hills is a new allocation and should have been processed under Section 73.207 of the current Commission rules. Dickerson had no legal obligation or responsibility to be aware of this proceeding or respond in a timely manner.

Does every Class A FM station have to retain legal counsel just to continue to operate on a day to day basis? I would have to spend all of my time trying to keep up with this long running daisy chain request of facility changes. Even so, one slip up, one mistake, not seeing a footnote mention or something at the end of a public notice<sup>7/</sup> and your station loses its' spacing protection.

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<sup>7/</sup> In this case, RM 8123 and RM 8124 were not published in the Federal Register Daily Digest.



Dickerson, in its' Petition for Reconsideration, under Conclusions, feels all suggestions are fair and reasonable. Dickerson is willing to change to any FM commercial channel if a fully spaced 6 KW omnidirectional channel can be found by the Commission at Dickerson's present tower site. Then the Commission can delete Channel 292A, 106.3 from Starke, Florida. At that point, Dickerson would be willing to dismiss its Petition to Deny.

Respectfully submitted,

Dickerson Broadcasting, Inc.

A handwritten signature in cursive script, appearing to read "Benjamin F. Dickerson", written over a horizontal line.

Benjamin F. Dickerson

Its President

June 9, 1993

EXHIBIT A

PERMIT FILE NO: BPH-890112MK

CALL SIGN: WCJX

EXHIBIT #17

AGREEMENT

This agreement is entered into this 3rd day of June 1992, by and between Carol Jean Lamons (hereinafter "Lamons"), permittee of WCJX, Five Points, Florida, and Dickerson Broadcasting, Inc. (hereinafter "Dickerson"), licensee of WEAG-FM, Starke, Florida. The parties seek to maximize the potential of their respective radio stations; and such potential may be limited by the fact that the transmitter locations of their stations are geographically closer to each other than specified in the Federal Communications Commission's Rules and Regulations 47CFR73.207(b)(1); and such separation may limit the maximum facilities absent an agreement between the parties. In consideration of the premises and mutual understandings and conditions herein, the parties agree as follows:

1. Lamons and Dickerson agree to the upgrading of each of the WCJX and WEAG-FM facilities to the maximum Class A power authorized by Federal Communications Commission's Rules and Regulations, nor will either party oppose applications filed by the other for such upgrades, and each party agrees to accept any electrical interference caused by the other station, when operating as specified in its instrument of authorization from the Federal Communications Commission. This agreement is preconditioned on the following conditions:

a) That either stations exceed 6,000 Watts ERP, or exceed a "reference distance" of 28.5 km as described in Federal Communications Commission's Rules and Regulations 47CFR73.210(b).

b) That the geographical distance between transmitter sites is not reduced to less than 64.5 km.

c) That the WCJX 54 dbuV F(50,10) contour not overlap the WEAG-FM 60 dbuV F(50,50) contour when operating at 1.35 kW ERP and 151 meters HAAT at its present transmitter location of North 29° 55' 50" Latitude, West 82° 06' 16" Longitude. In the case that WEAG-FM transmitter is relocated, then any future changes to the WCJX 54 dbuV F(50,10) contour may not increase the area of overlap with the WEAG-FM 60 dbuV F(50,50) contour.

d) That the WEAG-FM 54 dbuV F(50,10) contour not overlap the WCJX 60 dbuV F(50,50) contour when operating at 3.0 kW and 100 meters HAAT at its authorized transmitter location of North 30° 14' 40" Latitude and West 82° 40' 11" Longitude, or alternatively at its proposed location of North 30° 15' 4" Latitude and West 82° 40' 49" Longitude.

e) That Dickerson utilize only its present WEAG-FM antenna; an identical replacement antenna; a directional antenna as described in Federal Communications Commission's Rules and Regulations 47CFR73.316(b); an omnidirectional antenna in which the azimuthal performance has not been characterized; or an antenna where the azimuthal performance has been measured and has been shown not to exceed +1 db above rms in the azimuth toward WCJX from the WEAG-FM transmitter in either the vertical or horizontally polarized planes.

f) That Lamons utilize for WCJX a directional antenna as described in Federal Communications Commission's Rules and Regulations 47CFR73.316(b), an omnidirectional antenna in which the azimuthal performance has not been characterized; or an antenna where the azimuthal performance has been measured and has been shown not to exceed +1 db above rms in the azimuth toward WEAG-FM from the WCJX transmitter in either the vertical or horizontally polarized planes.

g) In the case that either party wishes to utilize an omnidirectional antenna in which the azimuthal performance has not been characterized, the antenna shall be side mounted on the leg or face of the tower facing away from the station of the other party.

2. The parties agree to accept such reasonable conditions on their respective construction permits as the Commission may find necessary in the public interest and which would work towards the effectuation of the purposes of this agreement.

3. The consents and agreements of each of the parties to this agreement are given irrespective of whether the other party chooses or does not choose to apply to the Federal Communication Commission for authority to construct improved facilities pursuant to this Agreement, or upon approval of the Commission, actually constructs and operates such facilities.

4. Copies of the Agreement may be filed with the Commission as deemed appropriate by the parties. This Agreement and the rights and obligations of the parties shall be subject to the terms and provisions of the Commission's Act of 1934, as amended, and the Federal Communications Commission's Rules and Regulations, as both may be amended from time to time.

5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

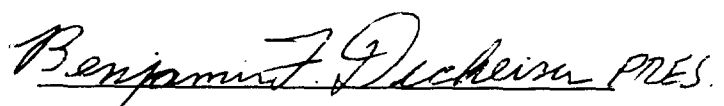
6. This Agreement embodies the entire agreement and understanding between the parties, and may not be modified except by a writing signed by both sides.

7. It is the intent of the parties to resolve any controversy as to the terms and/or conditions of this agreement by Arbitration.

In Witness Whereof, this Agreement has been executed by Carol Jean Lamons and Dickerson Broadcasting, Inc. as of the date first written above by the licensee, or a duly authorized corporate officer of the party.

Carol Jean Lamons

Dickerson Broadcasting, Inc.



CERTIFICATE OF SERVICE

I, Benjamin F. Dickerson, hereby certify that on this 9th Day of June, 1993, copies of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION were hand delivered or mailed, first class, postage prepaid, to the following:

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BENJAMIN F. DICKERSON

\* VIA Federal Express